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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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FILE:

LIN 07 062 52772

Office: NEBRASKA SERVICE CENTER

Date: **MAY 29 2009**

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. – An alien is described in this subparagraph if –

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as research neuroscientist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

The petitioner has submitted evidence that, he claims, meets the following criteria.<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

With the petition, the petitioner submitted a copy of a January 19, 1994 letter from the International Brain Research Organization (IBRO) Fellowship Committee, informing the petitioner that the committee had selected his application for a fellowship and that the final decision would be made by the national organization. The petitioner submitted no other documentation concerning the IBRO, that he received the fellowship or that receipt of a fellowship from the IBRO constitutes a nationally or internationally recognized prize or award for excellence in his field of endeavor.

In response to the director's request for evidence (RFE) dated January 31, 2008, the petitioner stated:

The IBRO Fellowship award is made annually to select outstanding, high-quality neuroscientists from diverse geographic and scientific areas around the world. The fellowship serves to encourage and reward works of merit and to ensure that such endeavors in neuroscience reach a wider audience outside their country of origin.

The petitioner also submitted a February 19, 2008 letter from [REDACTED], an assistant professor of psychology at Morehouse College. [REDACTED] stated:

The IBRO fellowship award is a highly prestigious award, awarded annually to outstanding neuroscientist whose contribution to the objectives of IBRO are remarkable, and extraordinary. [The petitioner] was selected by the IBRO, and the National Committee of the Czech Neuroscience Society on the strength of the impact of his contributions while a lecturer at the College of Medicine, Abia State University, Nigeria.

The petitioner has never established that he was finally selected for the IRBO Fellowship. Further, the petitioner submitted no documentation to corroborate any of the statements regarding the prominence of the IBRO Fellowship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner provided no documentation to establish that the IBRO Fellowship is a nationally or internationally recognized prize or award of excellence in his field of endeavor.

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The petitioner also indicated that he was awarded an IBRO/FENS travel award. However, he submitted no documentation regarding this award.

The petitioner failed to establish that he meets this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner's curriculum vitae indicates that he holds membership in the following organizations: the IBRO, Czech Neuroscience Society, Federation of European Neuroscience Societies (FENS), and Society for Neuroscience (SFN) and Anatomical Society of Nigeria. The petitioner submitted a copy of a July 6, 2005 e-mail congratulating him on approval of his application for regular membership status in the SFN and a November 2005 member identity card for the 35<sup>th</sup> annual meeting of the SFN. The petitioner, however, submitted no documentation about the membership requirements of the organization. He also submitted identity cards for FENS 2002 and a satellite symposium for IBRO. Neither of these cards indicate that the petitioner was a member of the organization and he provided no documentation regarding the membership requirements.

In response to the RFE, the petitioner emphasized that he was a "regular" member of the SFN and stated that the organization was an affiliate of the IBRO. He further stated that to be admitted for regular membership, "a neuroscientist [must have] earned [an] advanced university degree; with proven commitment to outstanding diligence in neuroscience as reflected in hi/her curriculum vitae and bibliography and must be sponsored by at least two regular members or members emeritus." [REDACTED] stated that regular membership in SFN "is only possible for accomplished neuroscientists as evidenced in their publication records and in the bibliography." The petitioner, however, did not provide any information from SFN or the IBRO to corroborate his statements or those of [REDACTED]. *Id.*

On appeal, counsel states:

We concede that *plain* membership alone in [the IBRO and SFN] does not require outstanding achievement in neuroscience. However, [the petitioner's] participation in this organization was not ordinary as, in addition to his published

research, he made no less than seven presentations to the [SFN] (and its European affiliates) in seven years. We know of no organization in the neuroscience field that would necessarily confer selective status just by membership. [Emphasis in original.]

Counsel's argument is without merit. The petitioner submitted no documentation from the IBRO or the SFN that outlines the membership requirements for the organization. No evidence distinguishes a "plain" member from a "regular" member, and the petitioner submitted no documentation to indicate that a member is required to perform any specific service for the organization as a condition of membership.

The petitioner has failed to establish that he meets this criterion.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In response to the RFE, the petitioner appears to assert that his peer-reviewed publications are evidence that he meets this criterion. In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

It is the nature of research to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In others, prior work is superseded by the findings of current research. In either case, the current researcher normally cites the work of prior researchers. Clearly this is not the same thing as published material written *about* an individual's work in the field. While in a general sense, the articles discuss the merits of the petitioner's work, the merits are addressed only as it is relative to that author's own research. Citations do not discuss the individual's standing in the field or any significant impact that his work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

The petitioner has not established that he has been the subject of published material that meets this criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

In response to the RFE, the petitioner stated that in 2004, he was the guest speaker at the SUMMA's Healthcare in Progress program. The petitioner did not show how being a guest

speaker is the same as being a judge of the work of others, and therefore evidence of this criterion.

The petitioner has failed to establish that he meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

With the petition, the petitioner submitted copies of six articles on which he had served as co-author and which were published in *Physiological Research*, *NeuroReport*, the *European Journal of Neuroscience*, *The Journal of Comparative Neurology*, and the *Orient Journal of Medicine*. The petitioner also submitted documentation indicating that he was co-author of a chapter in a book, *Plasticity and Signal Representation in the Auditory System*, and copies of two abstracts that he presented at conferences.

Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. As frequent publication of research findings is inherent to success as an established research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. We must consider the research community's reaction to those articles.

The petitioner submitted 18 articles by others that cited his work. This number of citations is not evidence that the petitioner's work is widely cited. On appeal, counsel attempts to explain the "importance of the reliance" of others on the petitioner's work. However, while counsel summarizes the documents and places his interpretation on the findings, the petitioner submitted no documentation to corroborate counsel's conclusions as to the significance of citations to his work. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has failed to establish that he meets this criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner did not initially allege that he meets this criterion. However, on appeal, counsel asserts:

[The petitioner] has had a leading role in IBRO and its related Societies for Neuroscience by making consistent presentations of crucially reviewed research. The purpose of these organizations is to give qualified scientists the opportunity to present research to each other. Petitioner, together with his various colleagues, has been extraordinarily active in doing that and has, as a result a leading role in the organization.

The petitioner's curriculum vitae includes a list of "selected international conferences" at which he indicates he presented abstracts of his work. Counsel states that these abstracts were "significant" and presented by the petitioner on behalf of the IBRO. The petitioner submitted a copy of an April 10, 2000 letter from FENS inviting him to the 2000 meeting and informing him that his abstract "Changes in the Activity of Neurones in the Inferior Colliculus After Auditory Cortex Ablation of the Rat" had been accepted for presentation at the meeting. The petitioner submitted no documentation to corroborate any presentations that he made at other meetings or conferences. The record contains no evidence to support counsel's statements that this presentation at FENS was made on behalf of the IBRO or that it was a "significant" contribution to the meeting. Counsel's unsupported statements are not evidence. *Id.*

Additionally, the petitioner provided no evidence that any presentations that he may have made on behalf of IBRO were in a critical role for the organization. It does not necessarily follow that the number of presentations is proportional to the petitioner's status in the organization. Further, there is no evidence of how the petitioner's presentations compared with others in the organization.

The petitioner has failed to establish that he meets this criterion.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." [Emphasis added]. Counsel asserts that "in evaluating whether a researcher has had on other scientists, specifically, the degree to which his research is relied on by other scientists in the field, and that this is "comparable to the provisions in 8 C.F.R. § 204.5(i)(C) applicable to academics.

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. However, we will briefly address counsel's argument under this provision.

Counsel asserts:

Here the record reflects that [the petitioner's] work has influenced other scientists particularly in the field of auditory nerve system functioning. This, we suggest, is distinct from the mere publication of work in "professional or major trade

publications or other major media” . . . It demonstrates influence in the field and not just intelligence or journeyman type research.

Despite counsel’s assertion, however, the record does not establish that the petitioner has had an influence on other scientists and counsel does not point to any evidence of this influence by the petitioner.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.